



March 6, 2023

Alan Davidson

Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
1401 Constitution Ave., NW
Washington, D.C. 20230

Re. Privacy, Equity and Civil Rights Request for Comment (Docket: NTIA-2003-0001)

On behalf of Asian Americans Advancing Justice | AAJC; thank you for the opportunity to submit comments regarding the National Telecommunications and Information Administration (NITA) request for comments on Privacy, Equity, and Civil Rights.

Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”) is dedicated to civil and human rights for Asian Americans and to promoting a fair and equitable society for all. We provide the growing Asian American community with multilingual resources, culturally appropriate community education, and public policy and civil rights advocacy. In the communications field, Advancing Justice | AAJC works to promote access to critical technology, services, and media for our consumers.

Our organization co-chairs the Asian American Tech Table, which was created to facilitate a more unified voice and presence in national tech and telecom policy debates. The Table convenes regularly with its members to discuss relevant policy concerns, while also engaging with industry and other stakeholders to raise the visibility of the Asian American community in tech policy and digital civil rights issues. Members of the Asian American Tech Table include The Center for Asian Pacific American Women, Filipina Women’s Network, Japanese American Citizens League, Asian Pacific American Institute for Congressional Studies, Council of Korean Americans, Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship, South Asian Americans Leading Together, National Queer Asian Pacific Islander Alliance, and Sikh American Legal Defense and Education Fund.

Question 2: Are there specific examples of how commercial data practices and processing practices may negatively affect underserved or marginalized communities more frequently or more severely than other populations?

Commercial surveillance can be highly invasive and discriminatory towards communities of color, including Asian Americans. Online companies' mass collection of personal data is used to target consumers with advertisements, content, and recommendations based on the perceived interests and demographics of these individuals. This process may introduce bias into the decision making process; when data-driven algorithms result in different individuals being shown different options for housing, employment, and credit opportunities, reproducing historical patterns of bias, this constitutes illegal discrimination.¹

For Asian Americans and other communities of color, the harms of automated decision-making and commercial surveillance are especially magnified for those who have Limited English Proficiency (LEP) or have been historically monitored and surveilled. Such individuals are vulnerable to privacy invasions, data breaches, and targeted disinformation. It is critical to consider how data collection and use practices have been intentionally manipulated, misused, and biased against these populations throughout history.

Data is not neutral and when decisions are made without addressing the discrimination embedded in the data, the results are inevitably also discriminatory. Many studies and other data collection methods throughout history exclude Asian American, Native Hawaiian, and Pacific Islander communities entirely from the data collection, limit data collection populations to only those who speak English, or fail to disaggregate any of the data. Unfortunately, this continues to be a common practice, at even institutions like Pew Research.² Up to 50% of AAPIs have Limited English Proficiency (LEP),³ and these populations are often in greatest need of protections and services. Any data collection methods that fail to reach and accurately represent the metrics of these communities entirely excludes AAPIs as an entire demographic group⁴ and/or skews the data significantly by only sampling the most convenient groups (those that speak English proficiently). Moreover, even though the AAPI community is one of the most diverse and complex⁵, data sets rarely ever disaggregate the data. For example, disaggregated data shows that LEP rates among Asian Americans and Pacific Islanders vary significantly:

¹ <https://www.brookings.edu/research/fairness-in-algorithmic-decision-making/>

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<https://www.pewresearch.org/internet/2013/03/29/why-pew-internet-does-not-regularly-report-statistics-for-asian-americans-and-their-technology-use/>

³ <https://aapidata.com/infographic-limited-english-2-2/>.

⁴

<https://www.urban.org/urban-wire/asian-americans-are-falling-through-cracks-data-representation-and-social-service>

⁵

<https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s/>

- Among Asian Americans, nearly 80% of Bhutanese Americans have LEP while 27% of Indian Americans have LEP.⁶
- The average LEP rate among Pacific Islanders is 8.5%, but these numbers also vary among different ethnic groups, from 41% of Marshallese Americans to 2% of Native Hawaiians.⁷

Instead of documenting these differences to create better user experiences, these discrepancies are disregarded; and Asian American, Native Hawaiian, and Pacific Islander demographics and experiences are conflated, lumping immensely different people into one group.

Thus, the use of algorithms and the data collected to make automated decisions for many AAPIs fails to accurately represent them, acknowledge, or include them at all. Automated decision making for Asian Americans, Native Hawaiians, and Pacific Islanders is rarely based on representative data. The NTIA should examine the ways that data is used to inform commercial data practices to ensure that all data is accurate, thorough, contextualized and actually representative of the lived realities of individuals. Without contextualizing, fixing, and augmenting data with more accurate metrics, the data that is used to make decisions for the AAPI community will continue to be inaccurate, biased, and ultimately harmful. Data sets must be audited for fairness, inclusivity, and accuracy before they are used to make significant decisions for individuals.

Question 3: Are there contexts in which commercial data collection and processing occur that warrant particularly rigorous scrutiny for their potential to cause disproportionate harm or enable discrimination?

The use of racially-based algorithmic discrimination, enabled by predatory commercial data collection, is especially egregious among social media companies. Meta, for example, has been the subject of several lawsuits that allege the use of illegal discriminatory advertising in violation of the Civil Rights Act of 1964 and the Fair Housing Act (FHA).⁸ In June of 2022, the Justice Department and Meta reached a settlement in which Meta agreed to stop the use of an advertising tool called “Special Ad Audiences” or “Lookalike Audiences” which, the settlement alleges, allows advertisers to discriminate on the” basis of race, sex, and other FHA-protected characteristics, by December 31, 2022.”⁹

⁶<https://aapidata.com/infographic-aa-limited-english-proficiency-2015/>

⁷ Ibid.

⁸ <https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook>

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<https://www.justice.gov/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known>

While this agreement is promising, the platform unfortunately has a pattern of finding workarounds to charges of discriminatory advertising practices. In fact, the use of “Special Ad Audiences” and “Lookalike Audiences” to target certain racial and ethnic groups only emerged following Facebook’s retirement of its controversial “multicultural affinity groups” in August 2020.¹⁰ Research found that these “Special Ad Audiences” were just as, if not more, effective at identifying certain racial groups than “multicultural affinity groups;” in one particularly noteworthy example, researchers used the Lookalike Audience feature based on Asian American voters with common Asian last names living in zip codes with high densities of Asian Americans and was able to identify a sample share of 100% Asians.¹¹ The ease with which certain communities can be isolated has pernicious implications; if a shoe company can use Facebook’s advertising tools to target certain Asian Americans with advertisements for new sneakers, bad actors can easily use similar methodologies to target these same individuals with disinformation for political gain.

Despite these specific advertising tools being sunsetted by Meta, without additional comprehensive protections at the federal level, companies like Meta will continue to circumvent existing rules and leave communities of color vulnerable to both targeted disinformation and racially discriminatory advertising.¹² Currently, Facebook, and other social platforms like it, effectively function as “manipulation machines.”¹³

As companies collect troves of sensitive personal data of its users, much of that data is also for sale, undermining consumer privacy and eroding Fourth Amendment rights. In one startling case, a number of apps popular among Muslim Americans worked with X-Mode, a data broker that sold location information to U.S military contractors and military intelligence. Apps like prayer time app Muslim Pro, with over 96 million downloads, collected and sold the granular location data of its users, putting Muslim Americans under government surveillance without their knowledge or consent.¹⁴ The harvesting and selling of this data by tech companies threatens both a user’s religious freedom and privacy. Profit-driven commercial data collection harms AAPI communities and will continue to do so in the absence of federal action.

Question 6: What other actions could be taken in response to the problems outlined in this request for comment?

The NITA must prioritize the language access needs of all technology users, including individuals with LEP, to ensure that they are able to fully understand and exercise their privacy rights. Language access poses a particular problem for the six million LEP Asian Americans who

¹⁰<https://www.bloomberg.com/news/articles/2020-08-11/facebook-further-limits-advertisers-ability-to-target-by-race?leadSource=uverify%20wall>

¹¹ <https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/>

¹² Ibid.

¹³ <https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/>

¹⁴ <https://www.vice.com/en/article/epdkze/muslim-apps-location-data-military-xmode>

speak over 100 different languages other than English and who must navigate terms and services, privacy notices, and cookie settings that are already laden with technical jargon and often inaccessible for even English proficient users. This is particularly true when navigating online consent forms as opt-out choices are not effective in protecting those with limited English language abilities, who likely cannot understand the language used in cookie notices well enough to successfully refuse data collection. In instances where translations exist, these notices are difficult to comprehend, as they are often written in technical jargon or grammatically incoherent without prior review and edits by a native speaker.

Language access is critical to addressing privacy harms as greater access to information would allow people in these communities to better understand what rights they have. Information centers, learning modules, notices, and other consumer resources must be made available in non-English languages, publicized in-language with trusted community members and centers, and tested with users to ensure intended users can actually access the systems that are built for them. Translations must be accessible and understandable to individuals, especially those with lower digital literacy abilities. While companies and platforms may create training, modules, and information centers in English (and sometimes Spanish), they rarely include Asian languages. Opt-outs are only useful if users actually have the knowledge and ability to control their options. When consumers are presented with clear, straightforward choices about how their data should be shared, the vast majority of individuals will often opt out of sharing their information with advertisers.¹⁵ Unfortunately for AAPI users, they are often never given the opportunity to make such a decision.

Transparency around data practices is necessary for consumers to understand how their sensitive data is being used and to understand the algorithms that determine which advertisements and economic opportunities they are shown. It is necessary that data transparency information is accessible in non-English languages, so all users can properly exercise their privacy rights. Companies have an obligation to ensure users fully understand how their data is being collected and used, and to give them the ability to easily make choices about their data. Without these safeguards in place, companies will continue to possess unfettered access to the data of these individuals, often at a dangerous cost to these vulnerable populations.

Only native-level speakers with deep knowledge of the community, cultural context, and familiarity with the vernacular should be utilized for translations. Community groups and leaders should be consulted before translations are published to ensure they are actually accessible and understandable to the target audience. Furthermore, some languages do not have written alphabets, posing unique challenges for groups like Rohingya refugees who do not have a universally accepted script and require additional in-language audiovisual support. Translations

¹⁵ <https://www.wired.com/story/why-dont-we-just-ban-targeted-advertising/>

should also include PSAs on local ethnic broadcast stations and resources that community organizations can distribute directly to clients.

The Asian American Tech Table, Advancing Justice | AAJC, OCA, and NCAPA thank you for the opportunity to provide comments related to this rulemaking. For more information, please contact Emily Chi, Director for Telecommunications, Technology, and Media at Asian Americans Advancing Justice | AAJC at echi@advancingjustice-ajc.org.

Sincerely,

Asian Americans Advancing Justice | AAJC